

## Chapter 355: Coastal Sand Dune Rules

---

### BASIS STATEMENT

Revisions to the coastal sand dune rules were proposed for the following two reasons: 1) to respond to concerns with the current rules, which are due to be repealed April 1, 2006, expressed by stakeholders in a process established by legislative mandate; and 2) to make minor changes to clarify issues with the rules that have been noted by Department staff since the current rules took effect in July 2004.

The major amendments to the rules include:

- Changes to Section 5(E) that, in concert with proposed changes to 38 M.R.S.A. § 480-W, clarify what temporary and permanent actions can be taken to repair and replace seawalls. Temporary material placed to protect threatened seawalls under Section 480-W would now have to be removed within 18 months and the Department would have to be notified when the material is placed. This section would also allow seawalls or similar structures to be replaced with a structure of different dimensions or in a different location if the replacement would be less damaging to the coastal sand dune system, existing wildlife habitat and adjacent properties than replacing the existing structure as it is.
- The addition of a new beach nourishment section that contains standards for dealing with beach nourishment projects.
- Sections 6C, 6D, 6E and 6F were rewritten to clarify the standards for reconstruction in frontal dunes and to provide new standards for the reconstruction of buildings damaged by wave action from an ocean storm in the entire frontal dune area.
- A mitigation and enhancement standard was added to Section 5, Standards for all projects.
- A definition of "practicable" was added to replace the word "possible".

The Board of Environmental Protection received comments on these rules during a public hearing in Portland on August 11, 2005. Written comments were accepted into the record through August 25, 2005.

---

### LIST OF COMMENTERS

#	Name	affiliation
1	Steve Dickson	Maine Geological Survey
2	Sally Stockwell	Maine Audubon Society
3	Steve Hinchman	Conservation Law Foundation
4	Robert Foley	Save Our Shores
5	Dave Curran	

---

6	Donald Nevel	
7	John Delahanty	
8	Christine Feurt	
9	Karen Tilberg	Department of Conservation

---

## RESPONSE TO COMMENTS FOR 2005 RULEMAKING

This document notes the substantive comments offered by the commenters at the hearing and in writing, and the Department's response to those comments. The number/numbers at the end of the comment corresponds to the commenters noted above. The comments are arranged in ascending order corresponding to the sections they refer to, with a final section of more general comments on the proposed rule. All references to Section number refer to the numbering as it appeared in the draft version posted to public hearing on June 16, 2005.

### **Section 3: Definitions.**

- 1) The rules should contain a definition of mitigation. 8

*Response: No change. The Department believes that mitigation is adequately described in Section 5(I).*

- 2) The rules should contain a definition of height. 5

*Response: No change. The Department believes that height, for the purposes of these rules, is adequately defined in Section 5(D)(2).*

### **Section 5: Standards for All Projects.**

#### **Section 5(C)**

- 3) How will shoreline changes expected within 100 years be determined? This policy needs to be described further. Is there a protocol for making these decisions? 8

*Response: No change. Since 1987 there has been 15 years of very detailed and thorough research on global climate change and sea level rise. Testimony at the 2003 public hearings on amendments to the Sand Dune Rules and the written comments during that rule-making reported a rate of sea level rise in the one foot range over the last century. In that rulemaking, in consideration of the potential impacts that global warming will have on sea levels in the future, the Board considered it prudent to allow for an additional one foot of rise. Regarding the issue of considering sea level rise over a hundred year period, the Department believes that the original basis for the use of that time period, as first established in 1983, anticipated assessing impacts from development over the useful life of structures in the sand dune system. That consideration is consistent with how the Department assesses other development proposals under its environmental statutes and there is no evidence in the record of this rulemaking to indicate that the Board's findings in the 2003 rulemaking are no longer valid. The Department considers evidence submitted by the applicant and interested parties as well as relying on the*

*expertise of staff from the Maine Geological Survey in determining the extent of shoreline changes expected at a particular site.*

**Section 5(E)(2)**

4) This section should be clarified to distinguish between temporary and permanent emergency actions allowed under Section 480-W of the Natural Resources Protection Act (NRPA) and permanent actions allowed in this rule. The commenter expressed concern that permanent footings could be placed at any time with a permit when they are not allowed now except as an emergency action under Section 480-W. 3

*Response: Section 5(E) has been rewritten to clarify what emergency actions are allowed under Section 480-W of the NRPA and what permanent alterations of a seawall will be allowed with a permit under these rules.*

**Section 5(E)(3)**

5) This section should be clarified to allow seawalls to be moved to a more landward location if the replacement seawall will meet the criteria in this section. 3, 1

*Response: The Department concurs and has added language to address this issue.*

**Section 5(I)**

6) This section should be more specific. What standards will be applied to ensure dunes are reconstructed so that they adequately function? 8

7) This proposed change applies to all projects, including those outside of flood zones and frontal dune areas. It seems to provide general direction for mitigation and enhancement but is not clear enough about exactly when such measures may be required or how much may be required. The commenter states that it would be helpful to have more clarity as to when mitigation and enhancement might be required for projects that are located outside of any flood hazard zone and frontal dune area. 7

*Response: No change. Section 5(I) allows the Department to require the restoration of the dune topography, the elevation of the crest of the sand dune to at least one foot above the 100 year flood/wave run up level and other provisions to enhance with native vegetation the portions of the lot not covered by buildings or parking areas. These criteria will help ensure that a dune mitigation or enhancement project will function adequately.*

*The Department will consider the viability and need for a specific mitigation project when assessing the stability and location of the project site during the review process.*

## **Section 6: Standards for Frontal Dune Property.**

### **Section 6(C)**

8) Owners of houses in V-zones should be able to reconstruct more than 50% of a house in situations where the house hasn't been damaged by wave action from an ocean storm or fire. 5

*Response: No change. The Natural Resources Protection Act allows, without a permit, the maintenance and repair of up to 50% of a building in a coastal sand dune system. The current rules allow the replacement of an existing full or partial foundation without a permit. The Department believes that the statutory maintenance and repair exemption, together with the ability to replace older foundations with post or pile foundations provides adequate opportunities for the protection of older buildings in these areas of special flood hazard.*

### **Section 6(G)**

9) The commenter recommends that Section 6(G) be changed by removing the reference to Section 6(B)(4). The commenter questions whether increasing the height or adding a dormer to an existing house would in any way influence the movement of sand and water and shoreline changes. 6

*Response: No change. All projects needing a permit are required to meet all the standards of the Natural Resources Protection Act, 38 M.R.S.A. Section 480-D, including the sand supply standard, regardless of the purpose or nature of the project. A larger house in a frontal dune may have impacts on sand and water movement and scenic and aesthetic uses, and the use of posts instead of a full foundation may mitigate impacts of the addition. The current rules allow for a variance from Section 6(G) in a case of undue hardship.*

## **Section 8: Standards for Beach Nourishment Projects.**

### **Section 8(E)**

10) The commenter recommends that a language change be made to the section to require that conservation easements specifically preclude any further development. 9

*Response: The Department concurs and the language has been changed.*

### **General Dune Comments**

11) Three commenters generally spoke in support of the proposed sand dune rule changes. 2, 3, 4

*Response: No response.*